IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12-1-2007

Coram

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.No.617 of 2002
W.A.M.P.No.1278 of 2002

1. V.Somasundaram

2. Nityakalyani

3. V.Sugandhi ... Appellants

Vs.

1. The Secretary to Government,
Revenue Department,
Fort St.George,
Chennai - 9.

2. The Assistant Commissioner,
(Land Reforms and Urban Land Ceiling),
Tiruchi-Pudukkottai Road,
Tiruchirapalli - 20.

3. S.Pitchai ... Respondents

This Writ Appeal has been filed under Clause 15 of Letters Patent against the order of the learned single Judge in W.P.No.6975 of 2000 dated 27.11.2001 to issue a Writ of Certiorari calling for records of the 2nd Respondent herein made in RC A1/875/92 dated 14.7.1992 under Section 9(5) of the Act and consequently issue of the final statement dated 30.6.96 under Section 10(1) of the Act and quash the same.

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For Appellant : Mr.K.Radhakrishnan

For Respondents 1&2 : Mr.K.Elango,
Special Govt. Pleader

For 3rd Respondent : No appearance

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J U D G M E N T

N. PAUL VASANTHAKUMAR, J.

This writ appeal is directed against the order passed by the learned single Judge in W.P.No.6975 of 2000 dated 27.11.2001 in and by which the proceedings under the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, initiated against the appellants were upheld.

2. The brief facts necessary for disposal of the writ appeal are as follows,

(a) The third respondent, who owns two acres of dry land in S.F.No.130/21 at Piratiyur village, Srirangam Taluk, converted the said land into house plots and sold the same. The first appellant purchased a plot measuring 5.51 cents as per document No.4235/1991 dated 11.9.1991. The second appellant, who is the wife of the first appellant, purchased two plots one measuring 5.55 cents and another 4.79 cents from the third respondent as per the document Nos.4310/94 and 768/95. The first appellant's cousin sister, the third appellant herein also purchased one plot measuring 5.51 cents under document No.573/1993. All the four plots situate in S.F.No.130/21 of Piratiyur Village and the same has been later on renumbered as S.F.No.158/21 in the updating survey.

(b) The case of the appellants is that when they have taken steps to put up live fencing around the plots, the Village Administrative Officer (Thalayari) of the village informed that the officials from the Srirangam Taluk Office came to the land and took measurement of the lands owned by the third respondent, two to three months ago. Thereafter the first appellant contacted the third respondent, who in turn informed that the second respondent had initiated proceedings on the land under the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 (hereinafter referred to as 'the Act') and handed over the copy of the order dated 14.7.1992 under section 9(5) of the Act and the final statement dated 30.6.1996 issued under section 10(1) of the Act.

(c) Thereafter the first appellant enquired in the office of the second respondent and came to know that after determining a fact that the third respondent was holding vacant land to the extent of 6590 sq.mtrs in excess over the Ceiling limit of 1500 sq.mtrs, had passed orders and issued notification under section 11(3) of the Act, published in the Tamil Nadu Government Gazettee, vesting the excess land with the Government. The appellants' land measuring 21.36 cents falls within the said extent of 6590 sq.mtrs of land declared as excess by the second respondent, which was previously owned by the third respondent.

(d) The case of the appellants is that they were not informed of this proceedings at any point of time either by the second respondent or by the third respondent and the impugned orders have been sent only to the third respondent and not to the appellants. It is further stated in the affidavit that the second respondent in his order dated 14.7.1992 stated that he had initiated proceedings under the Act only on the basis of the statement he received from the Sub-Registrar in Form-13 under section 27

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(1) of the Act read with Rule 19 of the Rules framed under the Act in respect of the lands sold by the third respondent to the appellants and others. Therefore it is contended that the second respondent, who is fully aware of the appellants landholds in S.F.No.130/21 has failed to issue notices to the appellants.

(e) It is the further case of the appellant that the second respondent had issued the final statement under section 10(1) of the Act, determining the extent of vacant land held by the third respondent in excess of the ceiling limit only on 30.6.1996, that is after the purchase of the lands by the appellants in the years 1991, 1993, 1994 and 1995. The appellants are interested persons over an extent of 868.52 sq.mtrs of land in S.F.No.130/21 (new No.158/21) in terms of ownership and possession. However, no notice was issued by the second respondent before taking over the said lands owned by the appellant and no opportunity was given to them and therefore the impugned orders are in violation of the principles of natural justice, particularly section 11(5) of the Act.

(f) It is also stated by the appellants that the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, was repealed with effect from 16.9.1999 by enacting the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 1999 (Act 20 of 1999) by the Government of Tamil Nadu and therefore the appellants were unable to prefer appeal before the Commissioner of Land Reforms.

3. Even though the writ petition was admitted as early as on 3.6.2002, no counter affidavit was filed by the respondents.

4. The learned single Judge dismissed the writ petition on two grounds. Firstly, the appellants purchased the property only after the Act came into force and therefore they cannot have any grievance with reference to the steps taken by the authorities under the Act as the extent of the ceiling should be fixed on commencement of the Act. The second reason stated for dismissing the writ petition was that the learned Government Advocate on instructions submitted that the possession has already been taken pursuant to the proceedings taken against the land owners and therefore at this stage the writ petition cannot be entertained.

5. The learned counsel for the appellants argued that the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, came into force on 3.8.1978 and as per section 3(p) of the Act, 'vacant land' is defined as the lands, which would not include agricultural land and as per section 3(o) and 3(c)(iii) read with Section 7, Ceiling Act would get attracted if they were 'vacant land' at the commencement of the Act i.e., 3.8.1978 or from the time of the land became vacant, ceasing to be agricultural land. The learned counsel further argued that insofar as the appellants' lands are concerned, it were continued to be agricultural lands before and after the commencement of the Act, that is, from 3.8.1978 till 1992 and therefore the provisions of the Act are not attracted and that is why from 1978 no action was initiated by the second respondent against the third

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respondent. Learned counsel further argued that the character of the land having been changed only in the year 1992, the second respondent initiated action against the third respondent and issued draft statement under section 9(1) and issued notice for enquiry under section 9(4) of the Act and called for objection, if any. Since the third respondent sold out the land, he did not respond and therefore the second respondent treated the third respondent as ex-parte and proceeded further and issued order dated 14.7.1992 under section 9(5) of the Act stating that the third respondent was holding excess lands than the ceiling limits and after four years on 30.6.1996 final notification under section 11(3) of the Act was published in the Tamil Nadu Government Gazettee, thereby vesting the excess lands to the Government.

6. The main contention urged by the learned counsel for the appellants is that the appellants are interested persons as they have purchased the lands from the third respondent and are in possession of their respective extent of land and hence the second respondent ought to have issued notice to the appellants, who are the real owners and therefore the action of the respondents are in violation of sections 9(4), 10(1) and 11(2) of the Act. The learned counsel ultimately argued that the vesting of the lands in question with the Government cannot be accepted in view of the non-compliance of the specific provisions contained in section 11(5) of the Act, which reads as follows,

> "Section 11(5) Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice."

Citing the said provision of the Act, the learned counsel argued that even according to the respondents, possession was taken only on 30.4.1999 i.e., long after purchase of the land by the appellants from 1991 to 1995 and non-issuance of the notice to the appellants vitiates the entire proceedings of vesting of lands with the Government.

7. Heard the learned Special Government Pleader for the respondents 1 and 2, who also produced the entire file and submitted that the possession was taken on 30.4.1999. We have perused the file and we find that there is no proof that notice was given to the appellants before taking possession under section 11(5) of the Act. The learned Special Government Pleader submitted that the possession having been taken before the repeal of the Act, the appellants are not entitled to challenge the orders of the respondents.

8. We have considered the rival contentions of the learned counsel for the appellants as well as the learned Special Government Pleader for the respondents 1 and 2.

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9. From the perusal of the file it is clear that proceedings were initiated against the third respondent, who is the erstwhile owner of the lands in question, in respect of transfer of his land to the appellants herein. Section 11(5) notice was also issued to the third respondent, who was not the real owner . As per section 11(5) of the Act, the competent authority is bound to issue notice in writing to any person, who may be in possession of the land, to surrender and delivery possession thereof, to the State Government or to any person duly authorised by the State Government, within thirty days time. No notice having been issued against the appellants, who are in possession of the lands as stated supra, taking possession of lands on 30.4.1999 by the second respondent is non-est. It is to be noted that due to the repealing of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, with effect from 16.9.1999, it is not open to the authorities to proceed against the appellants at this stage to rectify the non-compliance of section 11(5) of the Act.

10. Similar issue was considered by a learned single Judge of this Court (A.Kulasekaran, J.) in the decision reported in 2006 (5) CTC 52 (Vijay Foundation (P) Ltd. v. The Principal Commissioner and Commissioner of Land Reforms) and in para 7 the learned Judge held as follows,

> "7. The respondents herein have initiated acquisition proceedings against the person who is not at all owner of the lands. The above quoted mandatory conditions mentioned in Section 7 to 12 were not followed by the respondents. The statutory conditions for the purpose of acquiring the lands has not been followed at all in this case, hence, the alleged possession taken by the respondents is vitiated. The Ceiling Act is not like Land Acquisition Proceedings where the authorities are required to serve notice upon the owner or occupier of the land and on such person known or believed to be interested thereon to show cause within 30 days from the date of service of notice as to why the lands should not be acquired, hence, based on the entries in the mutation proceedings, the opportunity be given to the owner or occupier or person interested in the land be sufficient because the Notification specifies the intention of the Government to acquire the land for public purpose, which is mandatory. So, the defence that mutation proceedings contain only name of Krishnan, hence, the proceedings were not initiated against the petitioner is not a valid ground. Based on the proceedings initiated against the wrong person, the lands of the petitioner cannot be acquired by the respondents."

We are in entire agreement with the said decision of the learned Judge.

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11. As rightly contended by the learned counsel for the appellants, the appellants were not entitled to file appeal due to enactment of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 1999, from 16.9.1999. Hence the writ petition filed without availing the alternate remedy of filing appeal under section 33 of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, is maintainable.

12. In view of our above finding, the writ appeal is allowed. The order of the learned single Judge dated 27.11.2001 in W.P.No.6975 of 2000 is set aside. Consequently, the impugned orders of the second respondent dated 14.7.1992 and 30.6.1996 are quashed. No costs. Connected miscellaneous petition is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

vr/

To

1. The Secretary to Government, Revenue Department,
   Fort St.George, Chennai - 9.

2. The Assistant Commissioner,
   (Land Reforms and Urban Land Ceiling),
   Tiruchi-Pudukkottai Road, Tiruchirapalli - 20.

+ 1 CC To Mr. K.Radhakrishnan, Advocate SR NO. 2511

+ 1 CC to the Government Pleader SR NO 2811

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